IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 596 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJANIKANT MULJIBHAI PARMAR - Applicant(s)

Versus

PRATAPBHAI CHHAGANBHAI MAKWANA & 1 - Respondent(s)

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Appearance :

MR ARVIND A BAROT for Applicant(s) : 1,
MR PRATAPBHAI CHHAGANBHAI MAKWANA party in person for Respondent: 1,
MR HM PRACHCHHAK APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 05/10/2005

ORAL JUDGMENT

1. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the applicant seeks to challenge the judgment and order dated 30.7.2005 passed by the

Presiding Officer, Fast Track Court No.2, Gandhinagar in Criminal Appeal No.12 of 2005 by which the appeal filed by the applicant came to be dismissed and thereby the judgment and order dated 13.4.2005 recorded in Criminal Case No. 4327 of 2004 by the learned Joint Judicial Magistrate, First Class, Gandhinagar convicting the applicant for commission of the offence under Section 138 of the Negotiable Instruments Act ('the Act' for short) and sentencing him to suffer S.I. For one year and to pay an amount of Rs.73,000/- to respondent No.1/original complainant, came to be affirmed.

2. The applicant was badly in need of an amount of Rs.73,000/-. He, therefore, approached respondent No.1, who is doing money lending business. He borrowed an amount of Rs.73,000/- from him on 6.7.2003 with interest at the rate of 21% per annum. The applicant has executed three promissory notes along with Vachan Chitthi and statement of description was got executed on 6.7.2003 by respondent No.1. Respondent No.1 demanded the said money from the applicant but due to monetary hardship the applicant could not repay the same. The applicant thereafter issued a cheque dated 5.11.2003 for Rs.73,000/- in favour of respondent No.1. On presentation of the said cheque by respondent No.1, it was

dishonoured and returned by the bank with the endorsement “insufficient funds”. Therefore, respondent No.1 gave notice dated 12.4.2004 through his advocate to the applicant. The applicant could not pay the said amount of Rs.73,000/- and therefore respondent No.1 filed complaint against the applicant for the offence punishable under Section 138 of the Act in the Court of learned Judicial Magistrate, First Class, Gandhinagar where it was numbered as Criminal Case No. 4327 of 2004. The applicant was put on trial and at the end of the trial, the learned Magistrate convicted the applicant for commission of the offence under Section 138 of the Act and sentenced him to suffer S.I. For one year with a further order that the applicant should pay Rs.73,000/- to respondent No.1/complainant.

3. Aggrieved thereby the applicant went in appeal before the Sessions Court, Gandhinagar where it was numbered as Criminal Case No.12 of 2005 which was heard by the learned Presiding Officer, Fast Track Court No.2, Gandhinagar, and he vide order dated 30.7.2005 dismissed the said appeal upholding the conviction and sentence imposed upon the applicant by the learned Magistrate, which has given rise to the present revision application.

4. At the time of hearing of this revision application, Mr. Arvind Barot, learned advocate of the applicant and respondent No.1, who is personally present in Court, have jointly submitted that the dispute between the applicant and respondent No.1 has been settled between them outside the court and a compromise was arrived at between them and as per the terms of compromise, the applicant has already paid Rs.73,000/- to respondent No.1 and respondent No.1 has accepted the said amount as full and final settlement of his dues payable by the applicant. They jointly submitted that as per the settlement between the parties in terms of the compromise pursis, appropriate orders may be passed. They have also produced original settlement deed executed between both the parties on a stamp paper duly signed by both of them which is notarized in vernacular language and copy whereof is also supplied by them which is translated in English language. Respondent No.1 further states that he has received Rs.73,000/- from the applicant and as a token of receipt of Rs.73,000/- paid by the applicant to him, he has issued a stamped receipt, which is also produced on record.

5. In view of the above joint statement made on behalf of the applicant and by respondent No.1, Mr. Prachchhak,

learned APP for respondent No.2 – State of Gujarat submits that since the matter has been settled between the parties, appropriate orders may be passed.

6. This Court has considered the submissions advanced by Mr. Arvind Barot, learned advocate for the applicant, Mr. Prachchhak, learned APP for respondent No.2 – State of Gujarat and Mr. Pratapbhai Chhaganbhai Makwana, respondent No.1 – party in person and also perused the settlement deed executed between both the parties.

7. From perusal of the compromise deed it is seen that both the parties i.e., the applicant and respondent No.1 have entered into compromise on 23.8.2005 on the terms and conditions mentioned therein. As per the said compromise, respondent No.1 had filed one Criminal Case against the applicant for commission of the offence under section 138 of the Act before the learned JMFC, Gandhinagar which was registered as Criminal Case No.4327 of 2004. It was further inter alia stated that leaders of their society and community had intervened and therefore both the parties have made this compromise and therefore now no amount is due and recoverable by respondent No. 1 from the applicant. By virtue of this settlement the applicant has paid Rs.73,000/- which has been accepted by

respondent No.1 and as a token thereof respondent No.1 has issued a stamped receipt, which is produced on record.

8. So far as offence under section 138 of the Act is concerned, by virtue of the amendment, as per Section 147 of the Act, the offence has been made compoundable and since the offence is compoundable and both the parties have entered into compromise, according to this court, the impugned judgment and order convicting and sentencing the applicant for the offence under section 138 of the Act deserves to be quashed and set aside by allowing this revision application.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned judgment and order dated 13.4.2005 rendered in Criminal case No. 4327 of 2004 by the learned Joint JMFC, Gandhinagar by which the applicant has been convicted and sentenced to suffer S.I. for one year and also directed to pay Rs.73,000/- to respondent No.1 which is upheld by the learned Presiding Officer, Fast Track Court No.2, Gandhinagar in Criminal Appeal No.12 of 2005 is hereby quashed and set aside, the result of which is that the applicant is acquitted of the offence under Section 138 of the Act. His bail bonds

shall stand cancelled and sureties are discharged.

10. Original copy of the compromise deed entered into between the parties in vernacular language and translated copy of the same in English language shall be retained on record. The stamped receipt for Rs,73,000/- issued by respondent No.1 as a token of receipt of Rs.73,000/- from the applicant is also ordered to be taken on record.

Rule is made absolute.

(A.M. Kapadia, J.)

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